

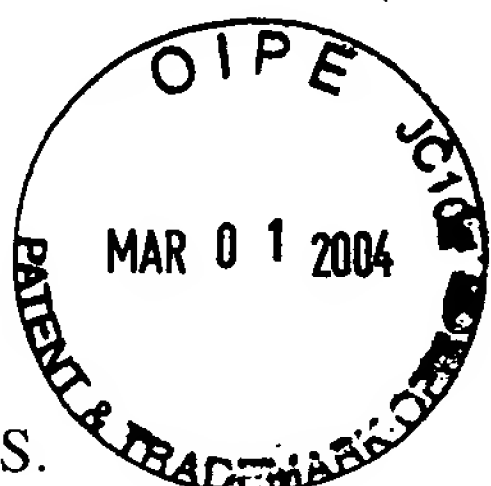


PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:

Sim, Gee-Kee  
Yang, Shumin  
Dreitz, Matthew J.  
Wonderling, Ramani S.



) Group Art Unit: 1633  
)  
) Examiner: Kaushal, Sumesh  
)  
) STATEMENT OF AGREEMENT  
) REGARDING CHANGE IN  
) INVENTORSHIP  
) Under 37 CFR 1.324(b)(3) and §3.73(b)

U.S. Patent No.: 6,482,403 B1

Issue Date: November 19, 2002

Serial No.: 09/451,527

Filing Date: December 1, 1999

Atty. File No.: IM-2-C2

For: "CANINE IL-13 IMMUNOREGULATORY  
PROTEINS AND USES THEREOF"

RECEIVED

MAR 05 2004

OFFICE OF PETITIONS

CERTIFICATE OF MAILING	
I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE U.S. POSTAL SERVICE AS FIRST CLASS MAIL ADDRESSED TO MAIL STOP PETITION, COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VIRGINIA 22313-1450, THIS <u>25</u> DAY OF <u>February</u> 2004.	
HESKA CORPORATION	
By: <u>Susan A. Gordon</u>	Susan A. Gordon

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

I, Carol Talkington Verser, Executive Vice President of Intellectual Property and Business Development for Heska Corporation, hereby state that as an officer of the company I am authorized to act on behalf of Heska Corporation, doing business at 1613 Prospect Parkway, Fort Collins, Colorado 80525. I further state that all rights and ownership in U.S. Patent No. 6,482,403 B1 have been assigned, by all inventors, solely to Heska Corporation. As evidence of ownership, a copy of the executed assignment has been attached.

Respectfully submitted,

Dated: 24 Feb, 2004

By: CT Verser  
Carol Talkington Verser, Ph.D.

RECEIVED  
MAR 11 2004  
TECH CENTER 1603-13009

DM-2-C2

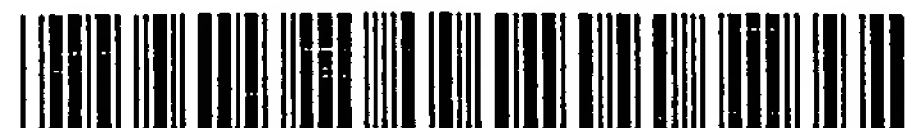
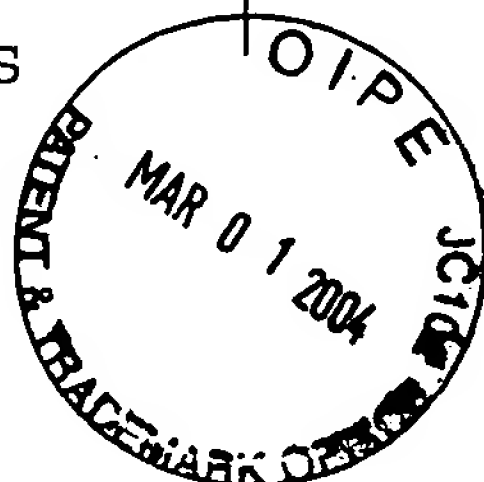


UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
ASSISTANT SECRETARY AND COMMISSIONER  
OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

AUGUST 18, 2000

HESKA CORPORATION  
CAROL TALKINGTON VERSER, PH.D.  
1613 PROSPECT PARKWAY  
FORT COLLINS, COLORADO 80525

PTAS



\*101394557A\*

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MAR 05 2004

'00 AUG 29 RCVD

UNITED STATES PATENT AND TRADEMARK OFFICE  
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 05/22/2000

REEL/FRAME: 010877/0941  
NUMBER OF PAGES: 7

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:  
YANG, SHUMIN

DOC DATE: 12/17/1999

ASSIGNOR:  
DREITZ, MATTHEW J.

DOC DATE: 12/17/1999

ASSIGNOR:  
WONDERLING, RAMANI S.

DOC DATE: 01/04/2000

ASSIGNEE:  
HESKA CORPORATION  
1613 PROSPECT PARKWAY  
FORT COLLINS, COLORADO 80525

SERIAL NUMBER: 09451527  
PATENT NUMBER:

FILING DATE: 12/01/1999  
ISSUE DATE:

RECEIVED  
MAR 11 2004  
TECH CENTER 1600/2900

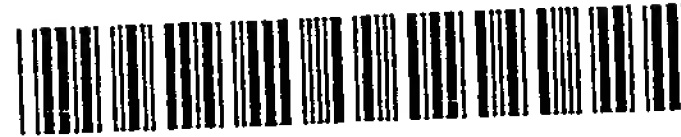
010877/0941 PAGE 2

JACQUELINE MOORE, PARALEGAL  
ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS

06-30-2000

PATENT

IN THE UNITED STATES

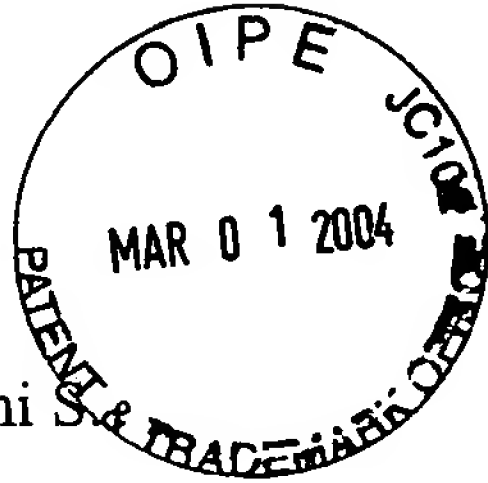


101394557

RK OFFICE

In Re the Application of:

Sim, Gek-Kee  
Yang, Shumin  
Dreitz, Matthew J.  
Wonderling, Ramani S.



) Group Art Unit:

) Examiner:

) RECORDATION OF ASSIGNMENT

RECEIVED  
MAY 22 1999  
OPR/FINANCE

Serial No. ( 09/451,527 )

Filed: December 1, 1999

5.22.00

Atty. File No.: IM-2-C2

For: "CANINE AND FELINE IMMUNO-  
REGULATORY PROTEINS, NUCLEIC  
ACID MOLECULES, AND USES  
THEREOF"

CERTIFICATE OF MAILING	
I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO BOX ASSIGNMENT, COMMISSIONER OF PATENTS AND TRADEMARKS, WASHINGTON, DC 20231, ON THIS <u>18</u> DAY OF <u>JUNE</u> 1999. <i>MAY 2000 tag</i>	
HESKA CORPORATION	
By: <u>Susan A. Gordon</u>	Susan A. Gordon

RECEIVED

MAR 05 2004

OFFICE OF PETITIONS

**BOX ASSIGNMENT**

Commissioner of Patents and Trademarks  
Washington, DC 20231

Dear Sir:

Please record the attached original documents or copy thereof:

1. Name of conveying parties:

Shumin Yang  
Matthew J. Dreitz  
Ramani S. Wonderling

2. Name and address of receiving party:

Heska Corporation  
1613 Prospect Parkway  
Fort Collins, Colorado 80525

3. Nature of Conveyance:

Assignment, executed December 17, 1999 and January 4, 2000.

RECEIVED  
MAR 11 2004  
TECH CENTER 1600/2900

06/30/2000 ASCOTT 00000015 09451527

01 FC:581

40.00 OP

4. Application number(s) or patent number(s):

This document is being filed in connection with U.S. Patent Application Serial No. 09/451,527, filed December 1, 1999.

5. Name and address of party to whom correspondence concerning documents should be mailed:

Carol Talkington Verser, Ph.D.  
Heska Corporation  
1613 Prospect Parkway  
Fort Collins, Colorado 80525

6. Total number of applications and patents involved: one.
7. Total fee of \$40 (37 CFR 3.41) is enclosed.
8. Deposit account number: 081930.
9. Total number of pages including cover sheet, attachments and document: seven.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Respectfully submitted:

Dated: May 18, 2000



Timothy L. McCutcheon, Esq.  
Registration No. 41,184  
Heska Corporation  
1613 Prospect Parkway  
Fort Collins, Colorado 80525  
Telephone: (970) 493-7272  
Facsimile: (970) 491-9976

## ASSIGNMENT

WHEREAS, we, Gek-Kee Sim of 3622 Terry Point Drive, Fort Collins, Colorado 80524; Shumin Yang of Stanford Villa Apartment #250, 3353 Alma Street, Palo Alto, California 94306; Matthew J. Dreitz of 4324 Winterstone, Fort Collins, Colorado 80525; and Ramani S. Wonderling of 5808 Park Ridge Court, Fort Collins, Colorado 80528; have invented a certain new and useful invention entitled "CANINE AND FELINE IMMUNOREGULATORY PROTEINS, NUCLEIC ACID MOLECULES, AND USES THEREOF," for which an application for Letters Patent of the United States has been prepared for filing, said application being identified as Attorney File No. IM-2-C2 and executed on even date herewith;

NOW THEREFORE, be it known that we, the said inventors, for and in consideration of certain good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, at the request of the assignee do sell, assign and transfer unto said assignee, Heska Corporation, a Delaware corporation, having a place of business at 1613 Prospect Parkway, Fort Collins, Colorado 80525, its successors, legal representatives and assigns, the aforesaid application for the territory of the United States of America and all continuation, divisional, continuation-in-part and reissue applications, all patent applications in foreign countries, all applications pursuant to the Patent Cooperation Treaty and all applications for extension filed or to be filed for the invention, and all Letters Patent, Invention Registrations, Utility Models, Extensions or Reissues and other patent rights, obtained for the invention in the United States or any other country; we also assign any right, title or interest in and to the said invention which has not already been transferred to the assignee, we warrant that we have made no assignment of the invention, application or patent therefor to a party other than Heska Corporation and we are under no obligation to make any assignment of the invention, application, or patent therefor to any other party; and we further agree to cooperate with the assignee hereunder in the obtaining and sustaining of any and all such Letters Patent and in confirming assignee's exclusive ownership of the invention, but at the expense of said assignee.


The Commissioner of Patents is hereby authorized and requested to issue the Letters Patent solely in accordance with the terms of this Assignment, to Heska Corporation, its successors, legal representatives and assigns, as the assignee of the entire right, title and interest therein.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date indicated hereunder.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Gek-Kee Sim

Date: 12/11/99

By:  \_\_\_\_\_  
Shumin Yang

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

San Mateo

SS.

On 12/17/99

Date

, before me, DIANE D. GLIOZZI, Notary Public

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

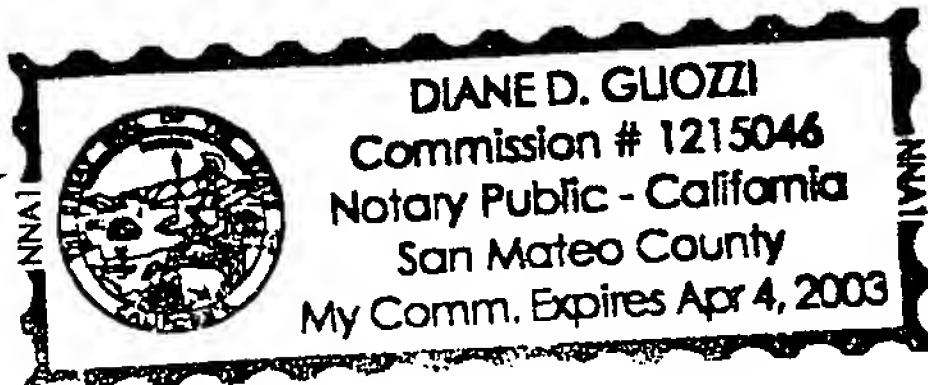
personally appeared

Shumin Yang

Name(s) of Signer(s)

- ☒ personally known to me  
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Diane D. Gliozzi  
Signature of Notary Public

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_


Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

RECEIVED  
MAR 11 2004  
TECH CENTER 1600/2320

Date: 12/17/99

By:   
Matthew J. Dreitz

Date: 1/4/2000

By: Ramani S. Wonderling  
Ramani S. Wonderling



STATE OF COLORADO )

COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared Gek-Kee Sim, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_ 1999.

My commission expires: \_\_\_\_\_.

Notary Public

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared Shumin Yang, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_ 1999.

My commission expires: \_\_\_\_\_

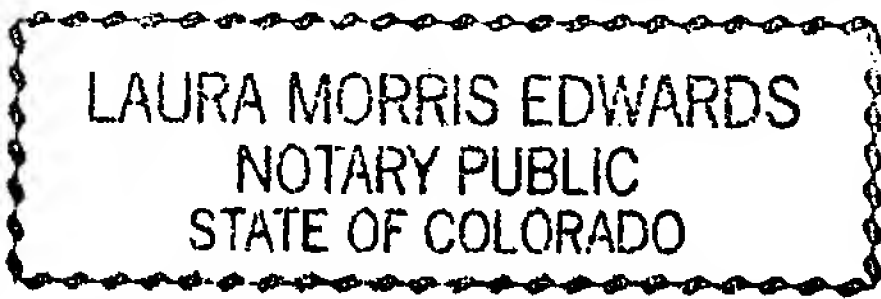
# Notary Public

COUNTY OF Adams )

Before me, a Notary Public in and for said County and State, personally appeared Matthew J. Dreitz, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this 17 day of December 1999.

My commission expires: 9/24/2001



My Commission Expires 09/24/2001

*Taura Marie Adams*  
Notary Public

STATE OF COLORADO ) ss.  
COUNTY OF LARIMER )

Before me, a Notary Public in and for said County and State, personally appeared Ramani S. Wonderling, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_ 1999.

My commission expires: \_\_\_\_\_

Notary Public



IM-2-c2  
UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
ASSISTANT SECRETARY AND COMMISSIONER  
OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

AUGUST 23, 2000

PTAS

HESKA CORPORATION  
CAROL TALKINGTON VERSER, PH.D.  
1613 PROSPECT PARKWAY  
FORT COLLINS, CO 80525



\*101393763A\*

100 SEP 1 1999

UNITED STATES PATENT AND TRADEMARK OFFICE  
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 05/22/2000

REEL/FRAME: 010888/0001

NUMBER OF PAGES: 21

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

SIM, GEK-KEE

DOC DATE: 05/18/2000

ASSIGNEE:

HESKA CORPORATION  
1613 PROSPECT PARKWAY  
FORT COLLINS, COLORADO 80525

SERIAL NUMBER: 09451527

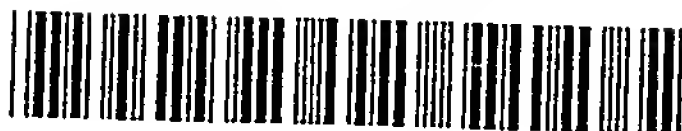
FILING DATE: 12/01/1999

PATENT NUMBER:

ISSUE DATE:

DOROTHY RILEY, PARALEGAL  
ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS

06-30-2000



101393763

PATENT APPLICATION

MARK OFFICE

OPR/FINANCE

MAY 22 AM 9:39

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IN THE UNIT

In Re the Application of:

Sim, Gek-Kee  
Yang, Shumin  
Dreitz, Matthew J.  
Wonderling, Ramani S.

Group Art Unit: 1643

Examiner:

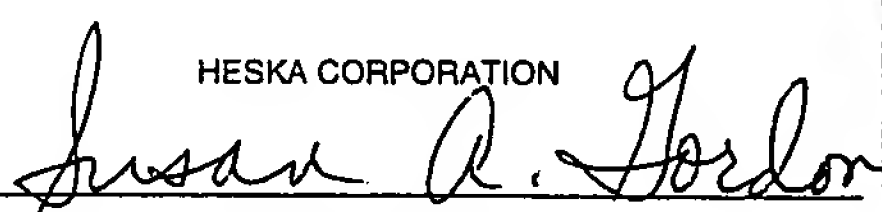
RECORDATION OF  
ASSIGNMENT

Serial No.: 09/451,527

Filed: December 1, 1999

Atty. File No.: IM-2-C2

For: "CANINE AND FELINE IMMUNO-  
REGULATORY PROTEINS, NUCLEIC  
ACID MOLECULES, AND USES  
THEREOF"

CERTIFICATE OF MAILING	
I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO BOX ASSIGNMENT, COMMISSIONER OF PATENTS AND TRADEMARKS, WASHINGTON, DC 20231, ON THIS 18 DAY OF MAY 2000.	
By:	 HESKA CORPORATION Susan A. Gordon

**BOX ASSIGNMENT**

Commissioner of Patents and Trademarks  
Washington, DC 20231

Dear Sir:

Please record the attached original documents or copy thereof:

1. Name of conveying parties: Gek-Kee Sim
2. Name and address of receiving party:

Heska Corporation  
1613 Prospect Parkway  
Fort Collins, Colorado 80525

3. Nature of Conveyance:

- (a) a true copy of "EMPLOYEE CONFIDENTIAL INFORMATION AND INVENTIONS AGREEMENT" signed by Gek-Kee Sim governing her employment at Heska Corporation from February 1, 1996 through August 25, 1998, which assigns all right, title and interest in all Inventions made by Gek-Kee Sim, as defined in Section 2 of the Agreement, to Heska

Corporation

- (b) Petition under 37 CFR § 1.47(a), Declaration of Susan A. Gordon, and accompanying documentary evidence, filed with the U.S. Patent and

06/30/2000 ASCOTT 00000014 09451527

01 FC:581

40.00 OP

Trademark Office on May 18, 2000, describing the nonresponsiveness of inventor Gek-Kee Sim, Ph.D.

4. Application number(s) or patent number(s): This document is being filed in connection with U.S. Patent Application Serial No. 09/451,527, filed December 1, 1999.
5. Name and address of party to whom correspondence concerning documents should be mailed:  
  
Carol Talkington Verser, Ph.D.  
Heska Corporation  
1613 Prospect Parkway  
Fort Collins, Colorado 80525
6. Total number of applications and patents involved: one.
7. Total fee of \$40 (37 CFR 3.41) is enclosed.
8. Deposit account number: 081930.
9. Total number of pages including cover sheet, attachments and document: \_\_\_\_.


To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

The correspondence address for this patent application remains:

Carol Talkington Verser, Ph.D.  
Heska Corporation  
1613 Prospect Parkway  
Fort Collins, Co 80525

Respectfully submitted:

Dated: May 18, 2000

  
Timothy L. McCutcheon, Esq.  
Registration No. 41,184  
Heska Corporation  
1613 Prospect Parkway  
Fort Collins, Colorado 80525  
Telephone: (970) 493-7272  
Facsimile: (970) 491-9976

COPY

**EMPLOYEE CONFIDENTIAL INFORMATION  
AND INVENTIONS AGREEMENT**

**THIS AGREEMENT** is between Heska Corporation a California corporation (the "Company"), and GekKee Sim (Employee").

**PURPOSE OF THE AGREEMENT**

I wish to be employed by, or continued in the employment of, the Company, and the Company wishes to employ me, or continue to employ me, provided that, in so doing, it can protect its trade secrets and inventions, ideas, information, business, and good will.

In consideration of this purpose, and the mutual promises in this Agreement, I agree with the Company as follows:

1. Confidential Information. I will hold in confidence during the entire term of my employment and for five years after the termination of my employment all Confidential Information of the Company and all Confidential Information of companies or persons other than the Company given to the Company under an agreement prohibiting its disclosure. "Confidential Information" refers to valuable technical or business information that is not known by the public. By way of example, Confidential Information may include information relating to: inventions or products, including unannounced products; research and development activities; requirements and specifications of specific customers and potential customers; nonpublic financial information; and quotations or proposals given to customers.

These restrictions on disclosure do not apply if (i) the information is or becomes publicly known through no wrongful act or part; (ii) I already knew the information prior to the time I began employment with the Company, other than by disclosure to me by the Company; (iii) I received the information without any wrong doing from someone outside the Company who does not have an obligation to keep the information confidential; (iv) the information is explicitly approved for release by an officer of the Company; or (v) the information is disclosed pursuant to the requirement of a governmental agency.

(2) Disclosure and Assignment of Inventions. I will promptly disclose and assign to the Company my entire right, title and interest in all Inventions. "Inventions" refers to (a) all technical or business innovations, whether or not patentable or copyrightable, made by me during the term of my employment; and (b) all technical or business innovations, whether or not patentable or copyrightable, based upon the Company's Confidential Information and made by me after leaving the Company's employment. I will keep adequate written records of all Inventions made by me, such as notebooks, sketches, program listings and the like, which are the property of the Company. Notwithstanding the foregoing, I am not required to assign to the Company, although I must disclose, any invention: (a) for which no equipment, supplies, facilities or Confidential Information of the Company were used and which was developed entirely on my own time; (b) which at the time of conception or reduction to practice did not relate directly to the business of the Company or the Company's actual or demonstrably anticipated research or development; and (c) which did not result from any work I performed for the Company. The disclosure of such inventions must be made so that the parties can make a determination whether such inventions do in fact qualify for exclusion from assignment to the Company. The Company will keep confidential any such information I disclose. I will take all steps necessary to assist the Company in securing any patents, copyrights, or other protection for Inventions which I am required to assign to the Company as provided above. If I am unable or unwilling, whether during my employment or after termination, to sign any papers needed to apply for or pursue any patent or



copyright registrations for Inventions, I agree that the Company is my attorney-in-fact for that purpose and can sign such papers as my agent and take any other actions necessary to pursue these registrations.

3. Tangible Materials. All tangible materials that incorporate Confidential Information are the Company's property, and I will give all these materials back to the Company at the termination of my employment or earlier upon the Company's request.

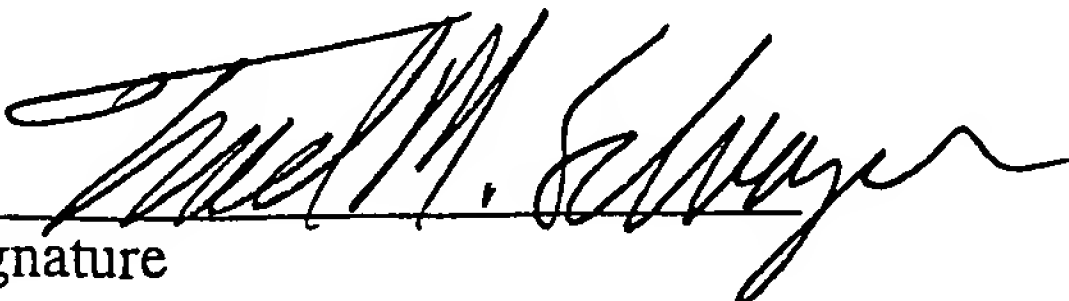
4. Duties to Third Parties. I represent that, to the best of my knowledge, compliance with the terms of this Agreement will not violate any duty that I may have to anyone other than the Company (such as a former employer) to keep such person's proprietary information in confidence or to refrain from using that person's patents or copyrights. If at any time during my employment with the Company, I am asked by the Company to perform work which I believe may cause me to violate a duty I have to someone other than the Company, I will immediately inform an officer of the Company so that an assessment of the situation may be made. I also agree that I will not, during my employment with the Company, bring onto the Company's premises, use or disclose to the Company any proprietary information or trade secrets of any former employer or any other person without that person's consent.


5. Miscellaneous. This is the only agreement between the Company and myself about confidential information and the ownership of inventions, and may not be modified, amended or terminated, in whole or in part, except in a writing signed by me and by an officer of the Company. I agree that, unless it is so modified, amended, or terminated, this Agreement shall be operative and binding with respect to the entire term of my employment with the Company, even if such term or employment commenced prior to the date on which I signed this Agreement. Any change in my title, compensation or duties will not affect this Agreement. This Agreement, other than the provisions which are expressly applicable only during my employment with the Company, will survive termination of my employment for any reason, and will continue for the benefit of and will be binding upon the successors, assigns, heirs and legal representatives of the Company and myself. The waiver by the Company of a breach of any of the obligations of this Agreement by me will not operate or be construed as a waiver of any other or subsequent breach by me. In the event any provision of this Agreement is held to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way. This Agreement will be governed by the laws of the State of California governing contracts between residents to be performed in the State of Colorado.

HESKA CORPORATION

EMPLOYEE

Fred M. Schwarzer  
President/CEO

  
Signature

  
Signature

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

COPY

In Re the Application of:

Sim, Gek-Kee  
 Yang, Shumin  
 Dreitz, Matthew J.  
 Wonderling, Ramani S.

Group Art Unit: 1643

Examiner:

PETITION

Serial No.: 09/451,527

Filed: December 1, 1999

Atty. File No.: IM-2-C2

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 ACID MOLECULES, AND USES  
 THEREOF"

CERTIFICATE OF MAILING	
I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO ASSISTANT COMMISSIONER FOR PATENTS, WASHINGTON, DC 20231, ON THIS <u>18</u> DAY OF MAY 2000.	
HESKA CORPORATION	
By: <u>Susan A. Gordon</u>	Susan A. Gordon

Assistant Commissioner for Patents  
 Washington, DC 20231

Dear Sir:

Applicants hereby petition, pursuant to 37 CFR § 1.47(a), for acceptance of the enclosed Declaration for Patent Application when one of the co-inventors, Gek-Kee Sim, refuses to sign or cannot be reached. In support of this Petition pursuant to 37 CFR § 1.47(a), enclosed is a Declaration of Susan A. Gordon setting forth the pertinent facts and the fee set forth in 37 CFR § 1.17(i). As disclosed in the attached Declaration and accompanying documentary evidence, Applicants can demonstrate (1) a bona fide attempt has been made to present a copy of the application papers to the non-signing inventor, and (2) Dr. Sim received and signed non-patent related documents during the time-frame in which attempts were made to obtain her signature for the present application. Accordingly, Applicants conclude that Dr. Sim's conduct constitutes a refusal to sign.



The correspondence address of the patent agent for the above-referenced patent application

remains:

Carol Talkington Verser, Ph.D.  
Heska Corporation  
1613 Prospect Parkway  
Fort Collins, CO 80525

Respectfully submitted,

Dated: May 18, 2000



Timothy L. McCutcheon, Esq.

Registration No. 41,184

Heska Corporation

1613 Prospect Parkway

Fort Collins, Colorado 80525

Telephone: (970) 493-7272

Facsimile: (970) 491-9976

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:

Sim, Gek-Kee  
Yang, Shumin  
Dreitz, Matthew J.  
Wonderling, Ramani S.

Serial No.: 09/451,527

Filed: December 1, 1999

Atty. File No.: IM-2-C2

For: "CANINE AND FELINE IMMUNO-  
REGULATORY PROTEINS, NUCLEIC ACID  
MOLECULES, AND USES THEREOF"

) Group Art Unit: 1643

) Examiner:

) DECLARATION OF  
) SUSAN A. GORDON

<p style="text-align: center;">CERTIFICATE OF MAILING</p> <p>I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO ASSISTANT COMMISSIONER FOR PATENTS, WASHINGTON, DC 20231, ON THIS <u>18</u> DAY OF <u>May</u> 2000.</p> <p style="text-align: center;">HESKA CORPORATION</p> <p>By: <u>Susan A. Gordon</u></p> <p style="text-align: center;">Susan A. Gordon</p>
---

Assistant Commissioner for Patents  
Washington, DC 20231

Dear Sir:

I, Susan A. Gordon, have firsthand knowledge of the facts set forth in paragraphs 1-7 below.

1. Gek-Kee Sim is a joint inventor of the above-identified patent application and a former employee of Heska Corporation.

2. Dr. Sim was an employee at Heska Corporation from February 1, 1996 through August 25, 1998. The last known official address provided by Dr. Sim that Heska Corporation has on file is 3622 Terry Point Drive, Fort Collins, CO 80524.

3. On July 23, 1999, I met with Dr. Sim at the Starbuck's on Drake Avenue in Fort Collins, CO to get her signature on patent documents unrelated to the present application. Dr. Sim informed me that she was putting her 3622 Terry Point Drive, Fort Collins, CO 80524 residence up for sale, and planned to move to the house of her acquaintance Dr. Andre Augustine.

4. In March of 2000, I called the Fort Collins Post Office and spoke with Steve O'Connell asking if Dr. Sim had left forwarding address information. Mr. O'Connell said that mail addressed to Dr. Sim at 3622 Terry Point Drive, Fort Collins, CO 80524 is not forwarded. Dr. Sim is no longer at that address and left no forwarding order.

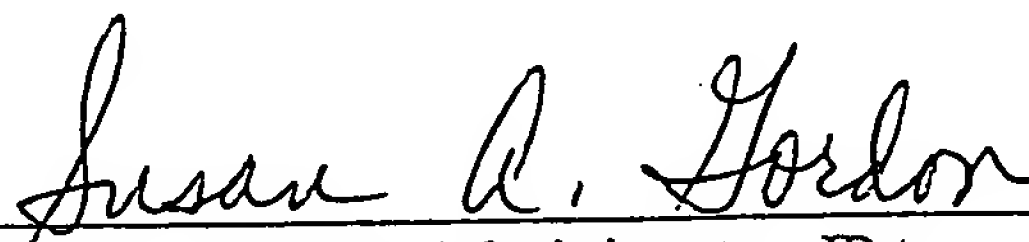
5. On April 5, 2000, I sent a letter signed by Carol Talkington Verser (patent agent for the above-referenced patent application) addressed to Dr. Sim, c/o 543 Franklin Street, Denver, Colorado 80218-3623, asking for her review and signature of a manuscript. Dr. Sim signed the enclosure to that letter, "Heska Technical Presentation Approval Form", and returned it with a note. Copies of the letter, Dr. Sim's signature on the approval form and Dr. Sim's note, along with the envelope in which she returned them, are attached as Exhibit A. Please note that the return address on the envelope used by Dr. Sim indicates that Dr. Sim is now using 543 Franklin Street, Denver, CO as her return address.

6. On April 19, 2000, I sent a letter signed by Carol Talkington Verser, Ph.D., to Dr. Sim, c/o 543 Franklin Street, Denver, Colorado, which is the address of her known acquaintance, Dr. Andre Augustine, enclosing a Declaration and Assignment for the above-referenced patent application and requesting that she sign the documents and return them to Dr. Verser. This letter was sent by Federal Express and signed for by A. August [sic] on April 20, 2000. To date, I have not received the documents. A copy of the letter and FedEx report are attached as Exhibit B.

7. On April 26, 2000, I inquired with telephone directory assistance for both the Fort Collins, CO and Denver, CO metropolitan areas for a residential listing for Dr. Sim and was informed that there are no listings for Dr. Sim.

I hereby declare that all statements made herein of my own are true and that statements made on information and belief are believed to be true; and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the subject application or any patent issuing therefrom.

Dated: May 18, 2000

  
\_\_\_\_\_  
Susan A. Gordon, Administrator, IP to  
Carol Talkington Verser, Ph.D. (Reg. No. 37,459)  
Heska Corporation  
1613 Prospect Parkway  
Fort Collins, Colorado 80525  
Telephone: (970) 493-7272  
Facsimile: (970) 491-9976

COPY



HESKA

1613 Prospect Parkway  
Fort Collins, CO 80525  
(t) 970-493-7272  
(f) 970-493-7333  
[www.heska.com](http://www.heska.com)

April 5, 2000

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Gek-Kee Sim, Ph.D.  
c/o 543 Franklin Street  
Denver, Colorado 80218-3623

Dear Gek-Kee:

Enclosed please find a copy of a manuscript entitled "i

with the following authors: Shumin Yang, Karen Sellins, Tim Powell, Earl Stoneman, and Gek Kee Sim. We welcome any suggestions that you may have to this manuscript, and encourage you to send them to me. As you are aware, it is Heska's policy that all authors must read and approve the contents of any manuscripts with which they are associated. We are also sending you a copy of the Heska Technical Presentation Approval Form for you to sign. We would like to submit this manuscript as soon as possible. If we do not hear from you by April 26, 2000, we will assume that you do not wish to be an author on this paper and remove your name from it.

I hope all is well with you.

Sincerely,

*Carol Talkington Verser*

Carol Talkington Verser, Ph.D.  
Vice President, Intellectual Property

Encl.

Copy to: Karen Sellins, Ph.D.  
Donald Wassom, Ph.D.

P 160 589 515

*Manuscript*

US Postal Service

# Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

PS Form 3800, April 1995

Sent to <b>Gek-Kee Sim, Ph.D.</b>	
Street & Number <b>543 Franklin Street</b>	
Post Office, State, & ZIP Code <b>Denver, CO. 80218-3623</b>	
Postage	\$ <b>1.21</b>
Certified Fee	<b>1.40</b>
Special Delivery Fee	
Restricted Delivery Fee	<b>2.75</b>
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	<b>1.25</b>
TOTAL Postage & Fees	\$ <b>6.61</b>
Postmark or Date <b>4-5-00</b>	

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X  
X  
X  
X

Is your RETURN ADDRESS completed on the reverse side?

## SENDER:

- Complete items 1 and/or 2 for additional services.
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- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- ☒ Addressee's Address
  - ☒ Restricted Delivery
- Consult postmaster for fee.

3. Article Addressed to:  
**Gek-Kee Sim, Ph.D.**  
**c/o 543 Franklin Street**  
**Denver, CO. 80218-3623**

4a. Article Number

**P 160 589 515**

4b. Service Type

- |   |   |
|---|---|
| <input type="checkbox"/> Registered                     | <input checked="" type="checkbox"/> Certified |
| <input type="checkbox"/> Express Mail                   | <input type="checkbox"/> Insured              |
| <input type="checkbox"/> Return Receipt for Merchandise | <input type="checkbox"/> COD                  |

7. Date of Delivery

**4/8**

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

**X** *[Signature]*

8. Addressee's Address (Only if requested and fee is paid)

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102595-97-B-0179

Domestic Return Receipt

MS 280

# HESKA TECHNICAL PRESENTATION APPROVAL FORM

TYPE OF PRESENTATION: Manuscript

IF MEETING, NAME AND DATE OF MEETING:

PRESENTATION DATE:

IF JOURNAL, NAME OF JOURNAL: Immunogenetics

SUBMISSION DEADLINE: \_\_\_\_\_

TITLE: \_\_\_\_\_

PRINCIPAL AUTHOR: Shumin Yang

OTHER CO-AUTHORS: Karen Sellins, Tim Powell, Earl Stoneman, Gek Kee Sim

Approved by:

[Signature]  
Principal Author

1/16/00  
Date

Karen Sellins  
Co-Author

2/23/00  
Date

[Signature]  
Co-Author

3/17/00  
Date

[Signature]  
Co-Author

4/23/00  
Date

\_\_\_\_\_  
Project Coordinator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chief Scientific Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Vice President, Intellectual Property

\_\_\_\_\_  
Date

For subjects related to clinical, development, and regulatory matters:

\_\_\_\_\_  
Executive Vice President

\_\_\_\_\_  
Date

COPY

4/23/00

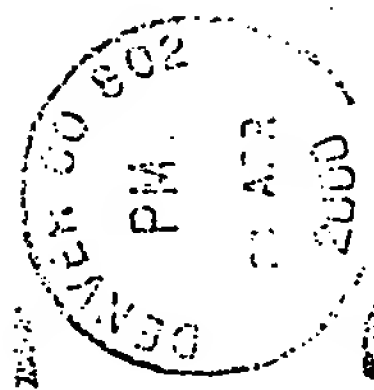
Dear Carol,

The manuscript is O.K. I would prefer to use feline instead of cat in the title, and canine instead of dog in the abstract &

Best Regards

Catherine

Gek-Kee Sim  
543 Franklin St.  
Denver CO 80218

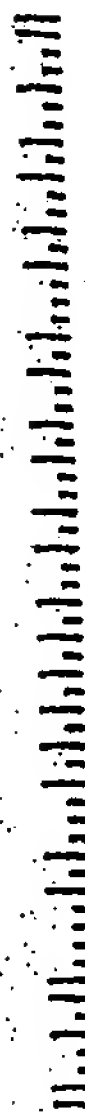


CAROL TAYLINGTON VERGER

HE SKA

1613 Fort Collins CO 80525

50525/9999



COPY



HESKA

April 19, 2000

1613 Prospect Parkway  
Fort Collins, CO 80525  
(t) 970-493-7272  
(f) 970-493-7333  
[www.heska.com](http://www.heska.com)

Via Federal Express

Gek-Kee Sim, Ph.D.  
c/o 543 Franklin Street  
Denver, Colorado 80218-3623

RE: U.S. Patent Application entitled, "CANINE AND FELINE IMMUNOREGULATORY  
PROTEINS, NUCLEIC ACID MOLECULES, AND USES THEREOF,"  
filed December 1, 1999  
(Our patent file no.: IM-2-C2)

Dear Gek-Kee:

Please find enclosed, for execution by you, a Declaration and an Assignment which we need to file before May 18, 2000, in support of the above-referenced patent application. Please sign and return these forms to us in the attached return FedEx envelope. Please note that your signature on the Assignment needs to be notarized. If your address has changed, please cross out the wrong address, print your correct address, and initial this change.

On December 9, 1999, we mailed to you a spiral-bound copy of the above-referenced patent application. We are assuming you received it because it never came back. If you do not have a copy of the application as filed, please let me know and we will send another. This filing is a continuation-in-part application of a U.S. Patent Application filed May 28, 1999, entitled "CANINE AND FELINE IMMUNOREGULATORY PROTEINS, NUCLEIC ACID MOLECULES, AND USES THEREOF"; which claims priority to a U.S. Provisional Patent Application filed May 29, 1998, entitled "CANINE INTERLEUKIN-4 AND FLT-3 LIGAND PROTEINS, NUCLEIC ACID MOLECULES, AND USES THEREOF". Because this application contains Heska confidential information, we ask that you keep the application and related documents in a secure place.

Thank you.

Sincerely,

Carol Talkington Verser, Ph.D.  
Vice President, Intellectual Property

Encls.



**FedEx® Letter**

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**FedEx** USA Airbill Tracking Number 801429352118

Sender's Copy

0200

Form I.D. No.

1 From (please print and press hard)

Date 4- -00 Sender's FedEx Account Number

Sender's Name Gek-kee Sim, Ph.D. Phone ( )

Company

Address 543 Franklin St.

Dept./Floor/Suite/Room

City Denver

State CO ZIP 80218-3623

2 Your Internal Billing Reference Information (Optional) (First 24 characters will appear on invoice)

1410

3 To (please print and press hard)

Recipient's Name Carol Talkington Verser, Ph.D. Phone (970) 493-7272

Company HESKA CORP

Check here if residence (Extra charge applies for FedEx Express Saver)

Address 1613 PROSPECT PARKWAY

(We Cannot Deliver to P.O. Boxes or P.O. ZIP Codes)

FORT COLLINS

State CO ZIP 80525

City

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287

8 Release Signature Sign to authorize delivery without obtaining signature.

\*When declaring a value higher than \$100 per shipment, you pay an additional charge. See SERVICE CONDITIONS, DECLARED VALUE, AND LIMIT OF LIABILITY section for further information.

Total Packages Total Weight Total Declared Value\* Total Charges

FedEx Account No. 1240-2891-4 Exp. Date

Bill to: Sender Recipient Third Party Credit Card Cash/Check

Payment

6 Special Handling Does this shipment contain dangerous goods? Yes No CA Cargo Aircraft Only

Dry Ice UN 1845 III (Dangerous Goods Shipper's Declaration not required)

5 Packaging Letter FedEx Pkg. FedEx Box FedEx Tube FedEx Other Pkg.

4b Express Freight Service Packages over 150 lbs. Delivery commitment may be later in some areas.

4a Express Package Service Packages under 150 lbs. Delivery commitment may be later in some areas.

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FedEx Priority Overnight (Next business morning) FedEx Standard Overnight (Second business day) FedEx Express Saver\* (Third business day)

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Delivered	DENVER	CO	04/20	09:09
Placed on Van	DENVER	CO	04/20	07:25
Arrived at FedEx Dest Loc	DENVER	CO	04/20	06:42
Left FedEx Ramp	DENVER	CO	04/19	23:33
Arrived at FedEx Ramp	DENVER	CO	04/19	20:27
Left FedEx Origin Location	FORT COLLINS	CO	04/19	18:53
Picked up	FORT COLLINS	CO	04/19	16:26

Delivered to.: Residential

Delivery time.: 09:09

Signed for by.: A.AUGUST

Delivery Address: 543 FRANKLIN ST

COPY

ASSIGNMENT

WHEREAS, we, Gek-Kee Sim of 3622 Terry Point Drive, Fort Collins, Colorado 80524; Shumin Yang of Stanford Villa Apartment #250, 3353 Alma Street, Palo Alto, California 94306; Matthew J. Dreitz of 4324 Winterstone, Fort Collins, Colorado 80525; and Ramani S. Wonderling of 5808 Park Ridge Court, Fort Collins, Colorado 80528; have invented a certain new and useful invention entitled "CANINE AND FELINE IMMUNOREGULATORY PROTEINS, NUCLEIC ACID MOLECULES, AND USES THEREOF," for which an application for Letters Patent of the United States has been prepared for filing, said application being identified as Attorney File No. IM-2-C2 and executed on even date herewith;

NOW THEREFORE, be it known that we, the said inventors, for and in consideration of certain good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, at the request of the assignee do sell, assign and transfer unto said assignee, Heska Corporation, a Delaware corporation, having a place of business at 1613 Prospect Parkway, Fort Collins, Colorado 80525, its successors, legal representatives and assigns, the aforesaid application for the territory of the United States of America and all continuation, divisional, continuation-in-part and reissue applications, all patent applications in foreign countries, all applications pursuant to the Patent Cooperation Treaty and all applications for extension filed or to be filed for the invention, and all Letters Patent, Invention Registrations, Utility Models, Extensions or Reissues and other patent rights, obtained for the invention in the United States or any other country; we also assign any right, title or interest in and to the said invention which has not already been transferred to the assignee, we warrant that we have made no assignment of the invention, application or patent therefor to a party other than Heska Corporation and we are under no obligation to make any assignment of the invention, application, or patent therefor to any other party; and we further agree to cooperate with the assignee hereunder in the obtaining and sustaining of any and all such Letters Patent and in confirming assignee's exclusive ownership of the invention, but at the expense of said assignee.

The Commissioner of Patents is hereby authorized and requested to issue the Letters Patent solely in accordance with the terms of this Assignment, to Heska Corporation, its successors, legal representatives and assigns, as the assignee of the entire right, title and interest therein.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date indicated hereunder.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Gek-Kee Sim

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Shumin Yang

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Matthew J. Dreitz

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Ramani S. Wonderling

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared Gek-Kee Sim, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_ 1999.

My commission expires: \_\_\_\_\_.

Notary Public

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared Shumin Yang, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_ 1999.

My commission expires: \_\_\_\_\_.

Notary Public

STATE OF COLORADO )

COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared Matthew J. Dreitz, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_ 1999.

My commission expires: \_\_\_\_\_.

Notary Public

STATE OF COLORADO

COUNTY OF LARIMER )

Before me, a Notary Public in and for said County and State, personally appeared Ramani S. Wonderling, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_ 1999.

My commission expires: \_\_\_\_\_.

Notary Public

COPY

RULE 63 (37 CFR § 1.63)  
DECLARATION  
FOR PATENT APPLICATION  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

As a below named inventor, I hereby declare that my residence, post office address and citizenship are as stated below next to my name, and I believe I am an original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled "CANINE AND FELINE IMMUNOREGULATORY PROTEINS, NUCLEIC ACID MOLECULES, AND USES THEREOF", the specification of which is being filed herewith and identified as Attorney File No. IM-2-C2.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above. I acknowledge the duty to disclose information which is material to patentability in accordance with 37 CFR §§ 1.56(a) and (b) as set forth on the attached sheet indicated Page 3 hereof and which I have read.

I hereby claim foreign priority benefits under 35 U.S.C. 119/365 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior Foreign Application(s)		<u>Day/Month/Year Filed</u>	Priority Claimed	
<u>Number</u>	<u>Country</u>		<u>Yes</u>	<u>No</u>
N/A				

I hereby claim the benefit under 35 U.S.C. 120/365 of all United States and PCT international applications listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in such prior applications in the manner provided by the first paragraph of 35 U.S.C. 112, I acknowledge the duty to disclose information material to patentability in accordance with 37 CFR §§ 1.56(a) and (b) which occurred between the filing date(s) of the prior application(s) and the national or PCT international filing date of this application:

<u>Application Serial No.</u>	<u>Filing Date</u>	<u>Status: patented, pending, abandoned</u>
09/322,409	5/28/99	pending
60/087,306	5/29/98	pending

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

1) Inventor's Signature \_\_\_\_\_ Date \_\_\_\_\_

Inventor's Name (typed): Gek-Kee Sim

Citizenship: United States

Residence: 3622 Terry Point Drive  
Fort Collins, Colorado 80524

Post Office Address: Same as Residence

2) Inventor's Signature \_\_\_\_\_ Date \_\_\_\_\_

Inventor's Name (typed): Shumin Yang

Citizenship: United States

Residence: Stanford Villa Apartment #250  
3353 Alma Street  
Palo Alto, California 94306

Post Office Address: Same as Residence



3) Inventor's Signature \_\_\_\_\_ Date \_\_\_\_\_

Inventor's Name (typed): Matthew J. Dreitz

Citizenship: United States

Residence: 4324 Winterstone  
Fort Collins, Colorado 80525

Post Office Address: Same as Residence

4) Inventor's Signature \_\_\_\_\_ Date \_\_\_\_\_

Inventor's Name (typed): Ramani S. Wonderling

Citizenship: United States

Residence: 5808 Park Ridge Court  
Fort Collins, Colorado 80528

Post Office Address: Same as Residence

37 CFR §§ 1.56(a) and (b)  
DUTY TO DISCLOSE INFORMATION MATERIAL  
TO PATENTABILITY

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

(1) prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of a patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.\*

\*Note, 37 CFR § 1.97(h) states: "The filing of an information disclosure statement shall not be construed to be an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in § 1.56(b)."